

<b>GUJARAT AUTHORITY FOR ADVANCE RULING</b> <b>GOODS AND SERVICES TAX</b> <b>D/5, RAJYA KAR BHAVAN, ASHRAM ROAD,</b> <b>AHMEDABAD – 380 009.</b>	
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**ADVANCE RULING NO. GUJ/GAAR/R/2025/ 13**  
**(IN APPLICATION NO. Advance Ruling/SGST&CGST/2024/AR/24 )**

**Date: 30/04/2025**

Name and address of the applicant	:	Zen Tobacco Private Limited, Opp. Lapkaman Lake, Lapkaman, Tal Daskroi, Dis Ahmedabad Gujarat- 380 060.
GSTIN of the applicant	:	24AABCT9591K1ZT
Jurisdiction Office	:	Center Commissionerate – Ahmedabad North Division – VI Range - V
Date of application	:	01.02.2024
Clause(s) of Section 97(2) of CGST / GGST Act, 2017, under which the question(s) raised.	:	(a), (b)
Date of Personal Hearing	:	26.11.2024
Present for the applicant	:	Shri V.K.Agrawal, Advocate, Shri R J Thakker and Shri P M Pandya.

**Brief facts:**

Zen Tobacco Private Limited, Opp. Lapkaman Lake, Lapkaman, Tal Daskroi, Dist. Ahmedabad, Gujarat- 380 060 [for short – ‘applicant’] is engaged in the manufacture and supplying of tobacco products. The applicant’s GST registration number is 24AABCT9591K1ZT.

2. The applicant proposes to pack and supply unbranded unmanufactured tobacco, premixed with lime. The process chart in respect of the said product ‘sada tambaku pre-mixed with lime’ submitted by the applicant states as follows:



अनब्रांडेड चुना मिश्रित तम्बाकू की निर्माण विधि।

कच्ची तम्बाकू को एक बड़े मिक्सर में डाला जायेगा।



फिर उसमें लाइम पेस्ट डाला जायेगा।



मिक्सर मशीन से अच्छी तरह मिलाया जायेगा।



फिर पाउच पैकिंग मशीन द्वारा विभिन्न ग्रामेज में पाउच पैक किया जायेगा।



फिर बाजार में बिक्री के लिए भेजा जायेगा।

3. The applicant has further stated as under:

- that the pouch in which the said unmanufactured tobacco pre-mixed with lime, is to be packed will bear no trade mark;
- that it shall bear mandatory details as required under statutory acts such as COTPA, Metrology (Packaged Commodities) Rules, 2011;
- that the details include name of the packer, statutory warning under COTPA Act, description of goods, RSP, net weight, etc.;
- that the goods are classified under Chapter 24 wherein unmanufactured tobacco is classified under HSN 2401 chargeable @ 28 % with the following two categories

Sr. No.	Description
1	Unmanufactured tobacco [without lime tube]
2	Unmanufactured tobacco [with lime tube]

- that their products '*sada tambaku premixed with lime*' falls under the category of unmanufactured tobacco without lime tube because they will not be packing & selling any tube of lime, inside the pouch;
- that the nature of the product & the consumer base, remains the same i.e. farmer, labourer, lower income class, etc.;
- that this product is not intended to be used with panmasala or in pan;
- that their product is principally unmanufactured tobacco with the only difference being that lime is mixed in it;
- that from the process chart it is evident that no new product comes into existence; that tobacco remains tobacco only; that it is akin to the product viz unmanufactured tobacco supplied along with lime tube & consumed by the consumer by adding the lime before consuming; that their submission is supported by the common parlance test;
- that it has to be classified as tobacco since the tobacco leaves are in raw state & has to be classified as unmanufactured tobacco; that mixing lime in the tobacco leaf does not amount to manufacture;
- that their product is neither ready for smoking nor intended for smoking; that the leaves are naturally cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut [including pieces cut to shape, but not tobacco ready for smoking];
- that since their product does not bear any brand name, no compensation cess is leviable; that they would fall under serial number 56 of notification No. 1/2017-Compensation Cess dtd 28.6.2017;



- that they would like to rely on the judgement of the Hon'ble SC in the case of Osnar Chemical P Ltd <sup>1</sup> and Damodar J Malpani <sup>2</sup>;
- that they would like to rely on the ruling in the case of M/s. Gynkeer Products P Ltd<sup>3</sup> and M/s. Pandey Traders <sup>4</sup>.

4. In view of the aforesaid, the applicant has sought advance ruling on the below mentioned questions viz

*1. What will be the classification of the goods viz 'sada tambaku pre-mixed with lime' proposed to be manufactured & supplied by them?*

*2. What will be the rate of GST & compensation cess of the goods viz 'sada tambaku pre-mixed with lime; proposed to be manufactured and supplied by them?*

5. Personal hearing in the matter was held on 26.11.2024 wherein the applicant was represented by Shri V K Agrawal, Advocate, Shri R J Thakker and Shri P M Pandya. They reiterated their submission made in the application and submitted a compilation of case laws.

#### **Revenue's submission:**

6. Deputy Commissioner, CGST, Division-VI, Ahmedabad North Commissionerate, vide their letter No. CGST-06/04-08/Div.VI/Tech-Adv. Ruling/2022-23, dated 27.02.2024 submitted the following comments viz:

- *the flow chart submitted by the applicant, explains the manufacture process of unbranded pre-mix lime tobacco;*
- *that the product is ready for end use by consumer;*
- *that the claimant first takes tobacco leaves (which are being cut in small pieces most probably) and then put into a mixer with lime, wherein lime (wet) is mixed properly with tobacco leaves and same is dried, packed and sent to market for sale. As such, as a result of the process carried on by the applicant, the raw tobacco becomes ready to use by the consumer, and hence the said process amounts to manufacture.*
- *this office is of the belief that the proposed product of the applicant should fall under the HSN 24039910-Chewing tobacco - without lime tube attracting CGST @ 28% and Compensation cess should be applicable as per Notification No.03/2023-Compensation Cess (Rate) dtd: 26.07.2023 as under;*

Sr.No	CTH/HSN	Description of Goods	Rate of GST Compensation Cess
26	2403 99 10	Chewing tobacco (without lime tube) with declared Retail Sale Price	0.56 R per unit
26A	2403 99 10	Chewing tobacco (without lime tube), other than goods covered under S.No.26 above.	160%

#### **Discussion and findings**

<sup>1</sup> 2012-TIOL-03-SC-CX

<sup>2</sup> 2002 (146) ELT 483 -SC

<sup>3</sup> Ruling No. Raj/AAR/22-23/07 dtd 1.6.2022

<sup>4</sup> Ruling No. 8/AAAR/09/08/2023 dtd 9.8.2023



7. At the outset, we would like to state that the provisions of both the CGST Act and the GGST Act are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the same provisions under the GGST Act.

8. We have considered the submissions made by the applicant in their application for advance ruling as well as the submissions made during the course of personal hearing. We have also considered the issue involved, the relevant facts & the applicant's submission/interpretation of law in respect of question on which the advance ruling is sought.

9. Before moving on to the contentions raised, we would like to reproduce the relevant entries from the Customs Tariff, the relevant explanatory notes from HSN, the relevant rate notifications viz

- Relevant entries from the Customs Tariff chapter heading 2401

CHAPTER 24				GST Rates*			
GST Tariff - Goods							
Chapter/ Heading/ Sub-heading/ Tariff Item	Description of goods	Unit	Central CGST	State/UT SGST/ UTGST	Inter- State IGST	Compensation Cess	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
			28% IGST or 14% CGST + 14% SGST/UTGST : Heading No. 2401 Unmanufactured tobacco; tobacco refuse [other than tobacco leaves]- Vide Notification Nos. 1/2017-C.T. (Rate) to 1/2017-I.T. (Rate), dated 28-6-2017 and SGST/UTGST Notifications.				
2401 10	- Tobacco, not stemmed or stripped:						
2401 10 10	--- Flue cured Virginia tobacco . . . . .	kg.	14%	14%	28%	\$	
2401 10 20	--- Sun cured country (natu) tobacco . . . . .	kg.	14%	14%	28%	\$	
2401 10 30	--- Sun cured Virginia tobacco . . . . .	kg.	14%	14%	28%	\$	
2401 10 40	--- Burley tobacco . . . . .	kg.	14%	14%	28%	\$	
2401 10 50	--- Tobacco for manufacture of biris, not stemmed	kg.	14%	14%	28%	\$	
2401 10 60	--- Tobacco for manufacture of chewing tobacco .	kg.	14%	14%	28%	\$	
2401 10 70	--- Tobacco for manufacture of cigar and cheroot .	kg.	14%	14%	28%	\$	
2401 10 80	--- Tobacco for manufacture of hookah tobacco .	kg.	14%	14%	28%	\$	
2401 10 90	--- Other . . . . .	kg.	14%	14%	28%	\$	
2401 20	- Tobacco, partly or wholly stemmed or stripped:						
2401 20 10	--- Flue cured Virginia tobacco . . . . .	kg.	14%	14%	28%	\$	
2401 20 20	--- Sun cured country (natu) tobacco . . . . .	kg.	14%	14%	28%	\$	
2401 20 30	--- Sun cured Virginia tobacco . . . . .	kg.	14%	14%	28%	\$	
2401 20 40	--- Burley tobacco . . . . .	kg.	14%	14%	28%	\$	
2401 20 50	--- Tobacco for manufacture of biris . . . . .	kg.	14%	14%	28%	\$	
2401 20 60	--- Tobacco for manufacture of chewing tobacco .	kg.	14%	14%	28%	\$	
2401 20 70	--- Tobacco for manufacture of cigar and cheroot .	kg.	14%	14%	28%	\$	
2401 20 80	--- Tobacco for manufacture of hookah tobacco .	kg.	14%	14%	28%	\$	
2401 20 90	--- Other . . . . .	kg.	14%	14%	28%	\$	
2401 30 00	- Tobacco refuse . . . . .	kg.	14%	14%	28%	\$	

5 Compensation Cess Rates:

Chapter/Heading/Sub-heading/Tariff item	Description of Goods	Rate of goods and services tax compensation cess
(1)	(2)	(3)
2401	Unmanufactured tobacco (without lime tube) - bearing a brand name	71%
2401	Unmanufactured tobacco (with lime tube) - bearing a brand name	65%
2401 30 00	Tobacco refuse, bearing a brand name	61%

No refund of unutilised Input Tax Credit of Compensation shall be allowed in respect of "Tobacco and unmanufactured tobacco substitutes" - Notification No. 3/2019-Compensation Cess (Rate), dated 30-9-2019.



- Relevant extracts of CGST rate notification

Notification No.1/2017-Central Tax (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (1) of section 9 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of the central tax of-

- (i) 2.5 per cent. in respect of goods specified in Schedule I,
- (ii) 6 per cent. in respect of goods specified in Schedule II,
- (iii) 9 per cent. in respect of goods specified in Schedule III,
- (iv) 14 per cent. in respect of goods specified in Schedule IV,
- (v) 1.5 per cent. in respect of goods specified in Schedule V, and
- (vi) 0.125 per cent. in respect of goods specified in Schedule VI

appended to this notification (hereinafter referred to as the said Schedules), that shall be levied on intra-State supplies of goods, the description of which is specified in the corresponding entry in column (3) of the said Schedules, falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedules.

**Schedule IV – 14%**

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods
(1)	(2)	(3)
13.	2401	Unmanufactured tobacco; tobacco refuse [other than tobacco leaves]
15.	2403	Other manufactured tobacco and manufactured tobacco substitutes: "homogenised" or "reconstituted" tobacco; tobacco extracts and essences [including biris]

- Relevant extracts of compensation cess notification

Notification No.1/2017-Compensation Cess (Rate)

New Delhi, the 28th June, 2017

G.S.R. (E).- In exercise of the powers conferred by sub-section (2) of section 8 of the Goods and Services Tax (Compensation to States) Act, 2017 (15 of 2017), the Central Government, on the recommendations of the Council, hereby notifies the rate of cess as specified in column (4) of the Schedule appended to this notification, that shall be levied on the intra-State supplies or inter-State supplies of such goods, the description of which is specified in the corresponding entry in column (3) and falling under the tariff item, sub-heading, heading or Chapter, as the case may be, as specified in the corresponding entry in column (2) of the said Schedule.

**Schedule**

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate of goods and services tax compensation cess
(1)	(2)	(3)	(4)
5.	2401	Unmanufactured tobacco (without lime tube) – bearing a brand name	71%
6.	2401	Unmanufactured tobacco (with lime tube) – bearing a brand name	65%
7.	2401 30 00	Tobacco refuse, bearing a brand name	61%
56.	Any chapter	All goods other than those mentioned at S. Nos. 1 to 55 above	Nil



*Explanation.-*

- (1) In this Schedule, "tariff item", "heading", "sub-heading" and "Chapter" shall mean respectively a tariff item, heading, sub-heading and Chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).
- (2) The rules for the interpretation of the First Schedule to the said Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.
- (3) For the purposes of this notification, the phrase "brand name" means brand name or trade name, whether registered or not, that is to say, a name or a mark, such as symbol, monogram, label, signature or invented word or writing which is used in relation to such specified goods for the purpose of indicating, or so as to indicate a connection in the course of trade between such specified goods and some person using such name or mark with or without any indication of the identity of that person.

- Relevant extracts of HSN explanatory notes

**24.01****24.01 - Unmanufactured tobacco; tobacco refuse.**

2401.10 - Tobacco, not stemmed/stripped

2401.20 - Tobacco, partly or wholly stemmed/stripped

2401.30 - Tobacco refuse

This heading covers :

- (1) **Unmanufactured tobacco** in the form of whole plants or leaves in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut (including pieces cut to shape, but **not** tobacco ready for smoking).
- Tobacco leaves, blended, stemmed/stripped and "cased" ("sauced" or "liquored") with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour are also covered in this heading.
- (2) **Tobacco refuse**, e.g., waste resulting from the manipulation of tobacco leaves, or from the manufacture of tobacco products (stalks, stems, midribs, trimmings, dust, etc.).

10. The applicant manufactures 'sada tambaku pre-mixed with lime'. The manufacturing process is already mentioned supra. The applicant is of the opinion that their product premixed with lime is an unmanufactured tobacco which will fall under HSN 24012090. Per-contra Revenue feels that owing to the process carried by the applicant, the raw tobacco becomes ready for use by the consumer, and hence the said process amounts to manufacture; that therefore, the proposed product is classifiable under HSN 24039910-Chewing tobacco-without lime tube, attracting GST @ 28%; that the compensation cess is also leviable in terms of notification No.03/2023-Compensation Cess (Rate) dtd: 26.07.2023.

11. HSN 2403, is reproduced below for ease of understanding:





CHAPTER 24		GST Tariff - Goods				288
Chapter/ Heading/ Sub-heading/ Tariff Item	Description of goods	Unit	GST Rates*			
			Central CGST	State/UT SGST/ UTGST	Inter- State IGST †	Compen- sation Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2403†	Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences		» 28% IGST or 14% CGST + 14% SGST/UTGST : Heading No. 2403 : Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences [including biris] – Vide Notification Nos. 1/2017-C.T. (Rate) & 1/2017-I.T. (Rate), dated 28-6-2017 and SGST/UTGST Notifications.			
	- Smoking tobacco, whether or not containing tobacco substitutes in any proportion					
2403 11	- Water pipe tobacco specified in Sub-heading Note to this Chapter:					
2403 11 10	--- Hookah or gudaku tobacco . . . . .	kg.	14%	14%	28%	†
2403 11 90	--- Other . . . . .	kg.	14%	14%	28%	†
2403 19	--- Other:					
2403 19 10	--- Smoking mixtures for pipes and cigarettes . . . . .	kg.	14%	14%	28%	†
	--- Biris :					
2403 19 21	--- Other than paper rolled biris, manufactured without the aid of machine	Tu	14%	14%	28%	†
2403 19 29	--- Other . . . . .	Tu	14%	14%	28%	†
2403 19 90	--- Other . . . . .	kg.	14%	14%	28%	†
	- Other:					
2403 91 00	--- "Homogenised" or "reconstituted" tobacco . . . . .	kg.	14%	14%	28%	†
2403 99	--- Other:					

† Compensation Cess Rates

Chapter/ Heading/ Sub-heading/ Tariff Item	Description of goods	Unit	GST Rates*			
			Central CGST	State/UT SGST/ UTGST	Inter- State IGST †	Compen- sation Cess
(1)	(2)	(3)	(4)	(5)	(6)	(7)
2403 99 10	--- Chewing tobacco . . . . .	kg.	14%	14%	28%	†
2403 99 20	--- Preparations containing chewing tobacco . . . . .	kg.	14%	14%	28%	†
2403 99 30	--- Jarda scented tobacco . . . . .	kg.	14%	14%	28%	†
2403 99 40	--- Snuff . . . . .	kg.	14%	14%	28%	†
2403 99 50	--- Preparations containing snuff . . . . .	kg.	14%	14%	28%	†
2403 99 60	--- Tobacco extracts and essence . . . . .	kg.	14%	14%	28%	†
2403 99 70	--- Cut-tobacco . . . . .	kg.	14%	14%	28%	†
2403 99 90	--- Other . . . . .	kg.	14%	14%	28%	†

The HSN notes for 24.03, which Revenue has proposed as the classification of the impugned goods, states as under:



**24.03 - Other manufactured tobacco and manufactured tobacco substitutes; "homogenised" or "reconstituted" tobacco; tobacco extracts and essences (+).**

- Smoking tobacco, whether or not containing tobacco substitutes in any proportion :

2403.11 -- Water pipe tobacco specified in Subheading Note 1 to this Chapter

2403.19 -- Other

- Other :

2403.91 -- "Homogenised" or "reconstituted" tobacco

2403.99 -- Other

This heading covers :

- (1) Smoking tobacco, whether or not containing tobacco substitutes in any proportion, for example, manufactured tobacco for use in pipes or for making cigarettes.
- (2) Chewing tobacco, usually highly fermented and liquored.
- (3) Snuff, more or less flavoured.
- (4) Tobacco compressed or liquored for making snuff.
- (5) Manufactured tobacco substitutes, for example, smoking mixtures not containing tobacco. However, products such as cannabis are excluded (heading 12.11).
- (6) "Homogenised" or "reconstituted" tobacco made by agglomerating finely divided tobacco from tobacco leaves, tobacco refuse or dust, whether or not on a backing (e.g., sheet of cellulose from tobacco stems), generally put up in the form of rectangular sheets or strip. It can be either used in the sheet form (as a wrapper) or shredded/chopped (as a filler).
- (7) Tobacco extracts and essences. These are liquids extracted from moist leaves by pressure, or prepared by boiling waste tobacco in water. They are used mainly for the manufacture of insecticides and parasiticides.

The heading does not cover :

- (a) Nicotine (the alkaloid extracted from tobacco) (heading 29.39).
- (b) Insecticides of heading 38.08.

12. Let us first examine the applicant's claim of the product being unmanufactured tobacco. In the supplementary notes, the term *tobacco* stands defined. There is no definition for the term *unmanufactured tobacco*. However, the explanatory notes of HSN 24.01 covers unmanufactured tobacco in the form of whole plants in the natural state or as cured or fermented leaves, whole or stemmed/stripped, trimmed or untrimmed, broken or cut [including pieces cut to shape, but not tobacco ready for smoking]; that tobacco leaves, blended, stemmed/stripped & 'cased' [sauced or liquored] with a liquid of appropriate composition mainly in order to prevent mould and drying and also to preserve the flavour are covered under this heading.

13. Likewise, we find that the term *chewing tobacco* under HSN 24039910, is also not defined. However, the explanatory notes to HSN 24.03 states that chewing tobacco, are usually highly fermented and liquored.





14. The Hon'ble Supreme Court in the case of M/s. Urmin Products P Ltd<sup>5</sup>, has adverted to the term 'chewing tobacco' as under: [relevant extracts]

*65. Keeping these aspects in mind when the facts on hand are perused it would disclose the product manufactured by the assessee-respondent is sold as 'Gopal zarda' and both the members of the Tribunal namely, technical members and judicial members are ad idem on the issue of the manufacturing process of the goods and the product in question namely, they all agree that tobacco flavouring substance is added and the judicial member has clearly held that the product is marketed as "flavoured chewing tobacco". This addition of scent or flavour in the 'chewing tobacco' was contended to be 'zarda/jarda scented tobacco' by the Revenue, whereas the assessee has taken a stand that by addition of the scent or flavour, it would not partake the character of the 'zarda/jarda scented tobacco' but continues to be 'chewing tobacco'. In this background, the difference between 'chewing tobacco' and 'zarda/jarda scented tobacco' if attempted to be ascertained from the definition found in the glossary of Bureau of Indian Standards, particularly in terms of definition and preparation, it is classified as under:*

*"2.27 'Chewing Tobacco' - Chewing tobacco, as its name suggests is a tobacco preparation for chewing purpose, also taken with paan (betel leaf). Gutka, surti, zarda, quiwam and dokta are some of the different types of chewing tobacco preparations.*

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*66. A careful perusal of the meaning allocated to the concerned products, 'Chewing Tobacco' and 'Zarda' leads to formulation of the following distinction based on the different parameters as under :*

***"Preparation and Form***

***Chewing Tobacco :*** Chewing tobacco typically comes in loose leaf or twist form. It consists of cured and fermented tobacco leaves. Chewing tobacco is usually taken by placing a portion of it between the cheek and gum, where it releases nicotine over time as it's slowly chewed.

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***Flavour and Aroma***

***Chewing Tobacco :*** Chewing tobacco can come in various flavours, but it may not always be as strongly scented or flavoured as Zarda. The flavours can range from natural tobacco flavours to menthol, wintergreen, or other fruit and spice flavours.

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***Use with Betel Nut and Paan***

***Chewing Tobacco :*** While chewing tobacco can be used alongside betel nut and paan, it is not exclusive to this combination. Chewing tobacco can be used independently as well.

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<sup>5</sup> 2024 (388) ELT 418 (SC)



15. Manufacture is defined under CGST Act, 2017 under section 2(72) to mean processing of raw materials or inputs in any manner that results in emergence of a new product having a distinct name, character and use. The process undertaken by the applicant, as is reproduced in paragraph *supra*, reveals that raw tobacco is mixed with lime paste in a big mixer consequent to which the same is packed in pouches of appropriate grams for supply. The applicant himself has mentioned that the tobacco leaves are never chewed/used directly but is mixed with lime and then it is consumed. The product of the applicant consequent to the process of mixing with lime is however, fit for consumption directly. The question therefore, that arises is whether the process undertaken of mixing the tobacco with lime in a big mixer amounts to manufacture or otherwise? The classification of the product hinges on this.

16. We find that the moment the tobacco is mixed with lime and subsequently supplied, it does not remain tobacco as such. It is the applicants own say that tobacco leaves are never chewed/used directly [refer para 3 of Annexure B]. A new product *ie* tobacco mixed with lime, which can be directly chewed/used, emerges which is a new product having a distinct name, character and use. In-fact it also falls within the ambit of the term 'chewing tobacco' as extracted from the judgement of the Hon'ble Supreme Court & reproduced *supra*. Thus, we hold and conclude that the process undertaken by the applicant leads to manufacture.

17. The moment, the process leads to manufacture, the resultant product of the applicant, '*sada tambaku pre-mixed with lime*' moves out of HSN 2401. The product will not merit classification under HSN 2402 also since it deals with Cigars, cheroots, cigarillos and cigarettes, of tobacco or of tobacco substitutes. The next HSN heading is 2403, whose description is other manufactured tobacco and manufactured tobacco substitutes; homogenized or reconstituted tobacco; tobacco extracts and essences. Ideally, the product, being manufactured tobacco merits classification under 24039910 under the head 'chewing tobacco'. In terms of the explanatory notes to HSN 24.03, chewing tobacco, are usually highly fermented and liquored. The product is liquored with



lime. Even otherwise, the wording used is that they are usually highly fermented and liquored, not mandatorily - highly fermented and liquored.

18. In view of the foregoing, we find that the applicant's product 'sada tambaku pre-mixed with lime' will fall under HSN 24039910 & leviable to GST at the rate of 28%.

19. The applicant in his additional submission during the course of personal hearing, has submitted a plethora of case laws. These cases laws have been grouped under two headings viz [a] interpretation of fiscal statute and [b] manufacture, the details of which are as under:

**[a] Interpretation of fiscal statute**

- Baroda Rayons Corporation <sup>6</sup>
- VVF India Ltd <sup>7</sup>
- A V Fernandez <sup>8</sup>
- Ranbaxy Laboratories Ltd <sup>9</sup>
- Intas Pharmaceuticals Ltd <sup>10</sup>

We have gone through the aforementioned judgements and are in respectful agreement with the judgement in so far as it lays down the principle as to how the fiscal statutes are to be interpreted.

**[b] Manufacture**

(i) Satnam Overseas Ltd <sup>11</sup>. The Hon'ble SC held that addition of dehydrated vegetables and spices to raw rice, does not lead to a different product since its primary and essential character remained same. Further, processing original product with addition of value is not sufficient unless its original identity also undergoes transformation and it becomes distinctive and new product.

(ii) Crane Betel Nut Powder Works <sup>12</sup>. The Hon'ble SC held that crushing betel nuts into smaller pieces and sweetening it with essential/non-essential oils, menthol, sweetening agents etc. did not result in manufacture of a new and distinct product having a different character and use as end product continues to retain its original character though in a modified form.

(iii) Pio Food Packers <sup>13</sup>. The Hon'ble SC held that manufacture is the end result of one or more or more processes through which the original commodity is made to pass;

<sup>6</sup> 2023 (383) ELT 375

<sup>7</sup> 2023 (70) GSTL 444 (SC)

<sup>8</sup> AIR 1957SC 657

<sup>9</sup> 2011 (273) ELT 3(SC)

<sup>10</sup> 2013 (289) ELT 256 (Guj)

<sup>11</sup> 2015 (318) ELT 538 (SC)

<sup>12</sup> 2007 (210) ELT 171 (SC)

<sup>13</sup> 1980 (60) ELT 343 SC



that only when the change takes the commodity to the point where commercially it is recognised as a new and distinct article, manufacture takes place; that even after preparing pineapple slices from original pineapple, the commodity continues to possess its original identity and cannot be said to be manufacture.

(iv) Lalji Godhoo & Company <sup>14</sup>. The Hon'ble SC held that process of subjecting raw asafoetida resulting in formation of compounded asafoetida does not amount to manufacture as chemical change not brought about by impugned process; that the products remain the same at starting and terminal points of the process.

(v) Technoweld Industries <sup>15</sup>. The Hon'ble SC held that process of drawing wires from wire rods does not amount to manufacture, as both products being wires.

(vi) Meltex (I) P Ltd <sup>16</sup>. The Hon'ble SC held that laminating/metallising of duty paid film does not amount to manufacture; that the product is a film to start with and remains a film after lamination or metallisation and no new and distinct product comes into existence.

(vii) S R Tissues P Ltd <sup>17</sup>. The Hon'ble Supreme Court held that slitting/cutting of jumbo rolls of plain tissue paper/aluminium foil into smaller size does not amount to manufacture as character and end-use did not undergo any change; that just because raw material and finished product come under two different headings, it cannot be presumed that process of obtaining finished product from such raw material constitutes manufacture.

The aforementioned case laws are not applicable owing to the fact that these case laws pertain to Central Excise regime. Even otherwise, we have already held that mixing lime paste with tobacco, results in the emergence of a new product having a distinct name, character and use, which according to the applicant himself can now be chewed/used, which but for the aforementioned process, was not the case.

(viii) Smartchem Technologies Ltd <sup>18</sup>. The Hon'ble SC held that departmental clarifications of CBEC neither withdrawn nor cancelled despite subsequent Larger Bench decision against it, is binding on department even if view taken therein was not warranted by language of statute.

As is evident, the facts of the case are not similar. The reliance therefore placed on this case is not tenable.

(ix) Muthuvelappa Gounder & Sons <sup>19</sup>. The finding of the Hon'ble Tribunal in the case is reproduced below for ease of understanding viz

*2. After hearing both sides we find that the respondents are merely curing the tobacco outside their premises by treating the same with jaggery water for preventing moulding and drying. Such treatment merely results in production of cured tobacco*

<sup>14</sup> 2007 (216) ELKT 514 (SC)

<sup>15</sup> 2003 (155) ELT 209 (SC)

<sup>16</sup> 2004 (165) EL 129 (SC)

<sup>17</sup> 2005 (101) ECC 505 (SC)

<sup>18</sup> 2004 (60) RLT 856

<sup>19</sup> 2010 (256) ELT 320 Tri



*which as per the HS Explanatory Notes under Heading 2401 remains covered as unmanufactured tobacco under the said heading. Accordingly, we find no merit in the case of the Department. Consequently, we uphold the impugned order and dismiss the appeal filed by the Revenue.*

We have gone through the aforementioned judgement. We find that the facts of the case are not forthcoming. Even otherwise, in this matter the tobacco was treated with jaggery water for preventing moulding and drying, which is not the issue in the present matter.

(x) Yogesh Associates<sup>20</sup>. The Hon'ble Tribunal allowed the assessee's appeal. The head notes are reproduced below for ease of reference viz

*Tobacco - Unmanufactured tobacco - Raw leaf treated with tobacco solution Quimam and other flavours including saffron water - Raw tobacco leaf not undergone any irreversible change and remains raw leaf tobacco unmanufactured - Mixture too concentrated for comfortable consumption by human beings and fails to meet test of marketability of product as 'chewing tobacco' - Classification under sub-heading 2401.10 of Central Excise Tariff appropriate. - No material has been garnered by Revenue in this regard of commercial understanding of the entity. Appellants had produced materials in the form of affidavits of the buyers and actual, admittedly industrial, users of the entity under dispute to establish that the product under dispute is not understood as 'chewing tobacco' by the persons dealing with the same. There is no material to conclude that Raw tobacco leaf has undergone irreversible change. Since the applications on Raw leaf do not result in proven irreversible change, the Raw leaf tobacco remains Raw leaf tobacco unmanufactured. In present case the application is of a solution of quimam (which is tobacco flavoured water) and other flavours including saffron water which admittedly serve no other purpose than to prepare a blend of unmanufactured tobacco for purposes of use in further manufacture of Gutkas/Pan Masala. The process indulged herein is found to be casing of Raw tobacco leaf relying upon material from internet. Therefore, classification under 2401.10 is upheld. Board vide its Circular No. 37/90-CX. 3, dated 17-7-90 in case of flavours/scents added in preparation of scented snuff held the view that snuff tobacco even after addition of 'Perfumes, Scents and Menthol' remain tobacco. Therefore, the explanatory notes of IISN bringing in the leaf treated with Tobacco Solution Quimam herein and thereafter with flavouring perfumes agents cannot transform Raw leaf tobacco unmanufactured to manufactured tobacco. [2004 (165) E.L.T. 425 (Tribunal); 1999 (113) E.L.T. 962 (Tribunal); 2000 (120) E.L.T. 699 (Tribunal); 1997 (96) E.L.T. 712 (Tribunal); 2003 (159) E.L.T. 709 (Tribunal); 2002 (147) E.L.T. 1184 (Tribunal); 1962 (3) STC 202; 2000 (117) E.L.T. 743 relied on]. [paras 2.2(a), 2.3(b), (c) & (e)]*

The department feeling aggrieved filed an appeal before the Hon'ble Apex Court, which after condoning the delay **dismissed** the CA No. D3948 of 2006 filed by CCE, Surat-II.

On going through the judgement, we find that the facts are not similar in so far as the Hon'ble Tribunal in this case held that the raw leaf treated with tobacco solution Quimam and other flavours including saffron water had not resulted in the raw tobacco leaf undergoing any irreversible change and that it remained raw leaf tobacco unmanufactured. The Tribunal further held that the mixture

<sup>20</sup> 2006(195) ELT 196 (Tri) & 2006 (199) ELT A 221 (SC)





was too concentrated for comfortable consumption by human beings and fails to meet test of marketability of product as 'chewing tobacco'. This is not the case with the product in question 'sada tambaku pre-mixed with lime' as post mixture of the tobacco with lime paste, it is fit for consumption/chewing.

(x)Gyankeer Products P Ltd <sup>21</sup>.

The reliance of the applicant is not tenable owing to [a] section 103 of the CGST Act, 2017 and also owing to the specific finding recorded in the ruling in the case of M/s. Dindayal Colloids P Ltd <sup>22</sup> wherein in paragraph 16, it is held as under

- 16) The Applicant has placed reliance on Advance Ruling No. RAJ/AAR/2022-23/07 dated 01.06.2022 in the case of Gyankeer Products Pvt. Ltd. and AR No. RAJ/AAR/2022-23/16 dated 20.10.2022 in the case of Samanvay Packmark Pvt. Ltd. which classifies a similar product i.e. 'tobacco pre-mixed with lime' as unmanufactured tobacco classified under CTH 24012090. In this context, we find it pertinent to mention here that in both the cases the product i.e. tobacco pre-mixed with lime was classified as 24012090. But in both the cases, investigation was conducted and sample were sent to the CRCL New Delhi and in both the cases they have reported that product manufactured by them is preparations containing tobacco i.e. manufactured tobacco.

(xi)Pandey Traders <sup>23</sup>.

In this case, raw unmanufactured tobacco dust, as a result of screening of raw tobacco wherein leaves, stem & other tender parts are separated through the process of drying, winnowing, crushing & separating through sieving and the better part are used for chewing tobacco while the remaining part in raw form i.e. stems, hard veins and leaves of tobacco plants are then crushed in dust form which is subsequently sold as such for human consumption. As is evident the facts are not similar therefore, reliance on this appellate ruling is not tenable.

20. As far as compensation cess is concerned, the appellant has stated that no compensation cess is leviable since their product does not have a brand name.

21. Since we have already held that the product of the applicant 'sada tambaku pre-mixed with lime' will be classifiable under HSN 24039910, Sr. No. 26, 26A, 27 and 27A of the notification No. 1/2017-Compensation Cess (Rate), is applicable, which states as under:

<sup>21</sup> Ruling No. Raj/AAR/2022-23/07 dated 1.6.2022

<sup>22</sup> Ruling No. Raj/AAR/2023-24/09 dated 26.6.2024

<sup>23</sup> Appeal Order No. 8/AAAR/09/08/2023 dated 09.08.2023.





26.	2403 99 10	Chewing tobacco (without lime tube), with declared retail sale price	0.56R per unit
26A.	2403 99 10	Chewing tobacco (without lime tube), other than goods covered under S. No. 26 above	160%
27.	2403 99 10	Chewing tobacco (with lime tube), with declared retail sale price	0.56R per unit
27A.	2403 99 10	Chewing tobacco (with lime tube), other than goods covered under S. No. 27 above	142%
28.	2403 99 10	Chewing tobacco (with lime tube), other than goods covered under S. No. 27 above	

It would not make any difference whether the product has a brand name or otherwise. Therefore, we restrain from giving any findings as to whether the product has brand name or otherwise. In view of the foregoing, compensation cess at the rate of 0.56R per unit in respect of the product with declared retail sale price **or** at the rate of 160% in respect of products other than goods covered under serial No. 26 above, is leviable on the said product of the applicant.

22. In the light of the above, we rule as under:

### RULING

1. The goods viz '*sada tambaku*' pre-mixed with lime' proposed to be manufactured & supplied by the applicant is classifiable under HSN 24039910.
2. The goods viz '*sada tambaku*' pre-mixed with lime' is leviable to GST at the rate of 28% [14% + 14%] in terms of serial No. 15 of Schedule IV of notification No. 1/2017-CT(Rate) dated 28.6.2017 and compensation cess at the rate of 0.56R per unit in respect of the product with declared retail sale price or at the rate of 160% in respect of products other than goods covered under serial No. 26 above in terms of notification No. 1/2017-Compensation Cess (Rate) dated 28.6.2017.

  
(Kamal Shukla)  
Member (SGST)



  
(P.B. Meena)  
Member (CGST)

Place: Ahmedabad

Date: 30.04.2025